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**Nos. 800 and 969, Oct. T. 1967**

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1968

WORLD AIRWAYS, INC., ET AL., *Petitioners*,

v.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

AMERICAN SOCIETY OF TRAVEL AGENTS, INC., *Petitioner*,

v.

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

**On Writs of Certiorari to the United States Court of Appeals for the Second Circuit**

## MOTION TO SUPPLEMENT PETITION FOR REHEARING

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## MOTION TO SUPPLEMENT PETITION FOR REHEARING

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WORLD AIRWAYS, INC., TRANS INTERNATIONAL AIRWAYS, INC., SATURN AIRWAYS, INC., CAPITOL INTERNATIONAL AIRWAYS, INC., AMERICAN FLYERS AIRLINE CORP., PURDUE AERONAUTICS CORP., and AMERICAN SOCIETY OF TRAVEL AGENTS, INC., petitioners in the above-entitled consolidated causes, move for leave to supplement their

petition for rehearing, which was timely filed and is awaiting disposition, in order to bring to the Court's attention legislation of a controlling character that was enacted subsequent to the filing of such petition.

*First.* Public Law 90-514, approved September 26, 1968, set forth in the appendix to this motion, disposes of the basic issues in this litigation.

Section 1 thereof redefined "charter trips" in the statute to include "inclusive tour charter trips."

Section 2 thereof "validated, ratified, and continued in effect according to their terms" the certificates of public convenience and necessity and statements of authorizations here concerned, "notwithstanding any contrary determinations by any court that the [Civil Aeronautics] Board lacked power to authorize the performance of inclusive tour charter trips in air transportation."

Thus the substantive questions in controversy between the parties to the present consolidated cases have been legislatively determined in favor of the several petitioners.

*Second.* Respondents' procedural contentions, which the Second Circuit did not reach (1143a), were renewed in this Court (Resp. Br. 73-81).

For reasons already fully set forth by the Civil Aeronautics Board (CAB Br., No. 946, pp. 30-35), we are convinced that those contentions were wholly lacking in substance when made. Moreover, it is also clear that they have even less weight now, by reason of the validation and ratification effected by Section 2 of Public Law 90-514. None the less, we think that it would be

more appropriate for these questions to be considered in the first instance by the original reviewing tribunal.

Accordingly, we believe that, in the face of the new legislation, the proper course for this Court would be to grant this motion to supplement; to grant the petition for rehearing; to vacate the previous judgment that was entered on May 27, 1968, following affirmance by an equally divided Court; and then to enter a new judgment vacating the judgment below and remanding the case to the Court of Appeals for disposition in the light of the Act of September 26, 1968, Public Law 90-514.

Respectfully submitted.

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OCTOBER 1968.

# APPENDIX

Public Law 90-514
90th Congress, S. 3566
September 26, 1968

# An Act



To amend the Federal Aviation Act of 1958 with respect to the definition of "supplemental air transportation", and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That paragraph (33) of section 101 of the Federal Aviation Act of 1958 is amended to read as follows:

Federal Aviation Act of 1958, amendment. 76 Stat. 143. 49 USC 1301. "Supplemental air transportation."

"(33) 'Supplemental air transportation' means charter trips, including inclusive tour charter trips, in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act. Nothing in this paragraph shall permit a supplemental air carrier to sell or offer for sale an inclusive tour in air transportation by selling or offering for sale individual tickets directly to members of the general public, or to do so indirectly by controlling, being controlled by, or under common control with, a person authorized by the Board to make such sales."

49 USC 1371.

SEC. 2. Certificates of public convenience and necessity for supplemental air transportation and statements of authorizations, issued by the Civil Aeronautics Board, are hereby validated, ratified, and continued in effect according to their terms, notwithstanding any contrary determinations by any court that the Board lacked power to authorize the performance of inclusive tour charter trips in air transportation.

SEC. 3. Section 401(e)(6) of the Federal Aviation Act of 1958 is amended to read as follows:

76 Stat. 144.

"(6) Any air carrier, other than a supplemental air carrier, may perform charter trips (including inclusive tour charter trips) or any other special service, without regard to the points named in its certificate, or the type of service provided therein, under regulations prescribed by the Board."

Approved September 26, 1968.

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LEGISLATIVE HISTORY:

HOUSE REPORT No. 1639 accompanying H. R. 17685 (Comm. on Interstate & Foreign Commerce).
SENATE REPORT No. 1354 (Comm. on Commerce).
CONGRESSIONAL RECORD, Vol. 114 (1968):
July 9-11: Considered and passed Senate.
Aug. 2: Considered and passed House, amended, in lieu of H. R. 17685.
Sept. 13: Senate agreed to House amendments.